

## **REMARKS**

Pursuant to 37 C.F.R. §1.111, reconsideration of the instant application, as amended herewith, is respectfully requested. Entry of the amendment is requested.

Claims 12-46 are presently pending before the Office. No claims have been canceled.

**The Examiner has rejected the claims as being indefinite over the phrase "During formation of a concrete wall. Applicant respectfully submits that upon further review, it has become abundantly clear that the Examiner has misconstrued the drawings and the intended use of the inventive device.**

Applicant has amended claims. No new matter has been added. Support for the amendments can be found throughout the specification as originally filed. Applicant is not intending in any manner to narrow the scope of the originally filed claims.

The Examiner's Action mailed November 4, 2003 (Paper No. 2) and the references cited therein have been carefully studied by Applicant and the undersigned counsel. The amendments appearing herein and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is believed to be in condition for allowance.

If it will assist the Examiner in understanding what the inventive device is used for, Applicant attaches herein U.S. Patent No. 5,829,213, which discloses a device for preventing damage to a poured concrete wall as it is being lifted in place. These wall sections are

understandably very heavy and relatively thick as they form structural walls for buildings. The wall plates discussed in the present invention are installed so that other building members, such as structural support beams, may be welded to the plates. Without the spacers, the weight of the wall plates would cause the plates to submerge in the we cement or the plates would not set up flush and parallel to the finished poured wall surface. Wall thicknesses can vary and the Nelson Studs and combined plate member is not as thick as the wall to be poured, so there is a need for a weldment plate support which also accommodates for the thickness of the wall to be poured.

Applicant submits that the pending claims do define the legal metes and bounds of the invention. It is not the role of the claims to enable one skilled in the art to reproduce the invention but rather to define, for those skilled in the art the legal metes and bounds of the invention. Nevertheless, in order to advance the case to allowance, the independent claims have been amended to clarify the features being claimed. Further, the elongate body portion refers to the concrete wall because the device is sized to accommodate the eventual job. For example, if a finished poured wall will be 8 inches thick, then a spacer support (invention), which when combined with a weldment plate and Nelson stud, must be long enough to reach the surface on which the cement is to be poured as the wall is being formed. The invention claimed is the device itself (spacer support), not the weldment plate with its attached welded Nelson stud, or concrete wall which is not yet poured.

For example, if the Examiner looks at Fig. 3, from bottom to top, everything below 21 is permanent concrete slab/floor (horizontal). 21 is the surface on the concrete floor that is specially treated to stop the bonding of the second concrete layer 18 (new wall section) to the existing floor concrete below 21. After the concrete floor has been poured, dried and cured

appropriately. A bond breaker or release agent, as known in the trade, is applied to the top surface 21 of the dried and clean floor. Temporary forms are then placed (see left and right side edges of Fig. 3) into which the concrete will be poured.

Assume the form on each of the sides forms an 8 inch height form, which will hold future poured concrete 18. Weldment plate 11 is a steel plate and includes two anchors (Nelson studs) welded to the weldment plate 11. The top plate 11 and Nelson studs are therefore one integral device. The plate 11 has to be placed between the forms at an exact height and width of the wall before concrete 18 can be poured. After the poured wall section has cured, a crane is used to lift the wall section into a vertical position. Plate 11 is what the rook supports/joists weld to during construction of the building. If plate 11 with its welded Nelson stud is only 4 inches in height, then the inventive device is adjusted so that the combined length of the plate and the inventive device attached to the Nelson stud is equal to the desired 8 inches.

Clearly, one can see that the inventive device is a separate device that provides support for the combined plate/Nelson stud. The concrete is poured after the fact and is not part of the invention.

It is respectfully submitted that the pending claims, as amended, fully complies with 35 U.S.C. §112, second paragraph. Withdrawal of the rejection is respectfully requested.

To aid the Examiner, Applicant submits three photos as well so the Examiner can see how the invention (one embodiment) is used to prepare an eventual pour of cement in the form to create the wall.

### CONCLUSION

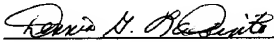
Even though the initial claims in this important patent application were drawn to a new, useful and nonobvious invention, they have now been amended to increase their specificity of language.

A Notice of Allowance is earnestly solicited.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 538-3800 would be appreciated.

Very respectfully,

Dated: 2-4-2004

  
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